IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3421 OF 2006

Satish Balu Khare ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri M.S.Mohite for the Applicant.

Shri U.V.Nikam, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 20, 2006.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the nature of controversy involved in the Application, taken up for hearing forthwith. The Applicant is facing a trial for offences punishable under section 376, 366 of the Indian Penal Code. The Applicant made an Application under section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973) for recall of the prosecutrix (P.W.3) Miss Trushali Panchal for further cross-examination. By order dated 25th August, 2006, which is impugned in this Application, the learned 3rd Additional Sessions judge, Thane rejected the said Application by observing that opportunity is already availed by the Applicant by cross-examining P.W.3 at length. It was also observed that the Application was

very vague.

2. Shri Mohite appearing for the Applicant pointed out that the charge was also under section 366 of the Indian Penal Code. He submitted that the Applicant desires to cross-examine P.W.3 only on the basis of letters which are annexed as Annexure "F" (collectively) to this Application. He submitted that the said letters, if proved, are very relevant for defending the charge under section 366 of the Indian Penal Code. He placed reliance on various decisions of the Apex Court including the decision in the case of **Shailendra Kumar Vs. State of Bihar & Ors. (2002 SAR (Cri.) Page 86)** and case of **Rajendra Prasad Vs. Narcotic Cell [(1999)6 Supreme Court Cases Page 110]**. The learned A.P.P. has opposed the Application by pointing out that the Application made by the Applicant was very vague. He submitted that the Application was belatedly filed and therefore, the learned Trial Judge was right in rejecting the Application.

3. I have considered the submissions. In the case of Shailendra Kumar (supra) the Apex Court has considered the scope of section 311 of the said Code of 1973. The Apex Court held that the scope of the

section was very wide and even if there is any negligence, latches or mistake by not examining material witnesses, the court's function to render just decision by examining said witnesses at any stage is not, in any way, impaired. In the present case, now a submission has been made before me that further cross-examination of P.W.3 will be restricted to the three letters which are annexed as Annexure "F" (collectively) to this Application. Therefore, the objection that the Application is vague will not survive. Considering the charge against the Applicant, this was a case where power under section 311 of the said Code ought to have been exercised by the Trial Court. Hence, this Application must succeed in part.

4. Accordingly, I pass the following order:

(i) The impugned order dated 25th August, 2006 passed by the learned 3rd Additional Sessions Judge, Thane below Application at Exhibit 44 in Sessions Case No.539 of 2005 is set aside.

(ii) Application at Exhibit 44 made by the Applicant is partly allowed.

(iii) P.W.3 Trushali Tanaji Panchal be recalled for further cross-examination by the Advocate for the Applicant. It is clarified that the further cross-examination by the Applicant shall be confined to the documents which are annexed as Annexure "F" to this Application.

(iv) The office is directed to send xerox copies of the documents which are marked as Annexure "F"(collectively) alongwith Writ of this order to the Trial Court.

(v) Rule is made partly absolute in above terms.

(vi) Writ to be sent forthwith.

JUDGE